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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,496	09/30/2003	Josef J. Stupecky	INAS.003A	8530
20995	7590	03/29/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			CRANE, DANIEL C	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			3725	

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/676,496	STUPECKY, JOSEF J.	
	Examiner	Art Unit	
	Daniel C Crane	3725	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-9,12 and 14-20 is/are rejected.
- 7) ☒ Claim(s) 5,10,11 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/26/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

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## **CLAIM OBJECTION**

Claim 6 has been examined as best understood in light of the fact that this claim depends from a nonexistent claim, i.e., claim 22.

## **BASIS FOR REJECTIONS**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

## **REJECTION OF CLAIMS OVER PRIOR ART**

Claims 1-3, 7, 8 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Ching (6,581,262). See Figures 3 and 4 where the die 10 is provided with a lower block portion 80 having front and rear plates, each having cavities 72, 82 for facilitating the swaging operation, and having stops (unlabeled) that limit the travel of the impact plate 70. Biasing means is shown at 90.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ching (6,481,262). This claim has been examined as best understood per the objection noted above. While Ching does not indicate the material used for the die, it is the examiner's position that the selection of material would have been dictated by its intended use. Clearly, the skilled artisan having the benefit of Ching's device would have recognized the use of material in the manufacture of the device to withstand impacts necessary for the crimping operation. It would have been obvious to the skilled artisan at the time of the invention to have modified Ching's device by constructing the device from hardened material for the noted motivation.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ching (6,481,262) in view of Sauder (4,696,085). Ching illustrates a cylindrical cavity 72. Tapered cavities in combination with a cylindrical cavity is known in the art as evidenced by Sauder at 2, thus, facilitating insertion of the workpiece. Accordingly, such a provision by Sauder within Ching's device for the noted motivation would have been obvious to the skilled artisan at the time of the invention.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ching (6,481,262) in view of Mars (1,051,777). Ching does not show guide pins. This is widely used in the press art as evident by Mars where pins 8 are provided to assist in guiding the reciprocating movement of the dies. IT would have been obvious to the skilled artisan at the time of the invention to have modified Ching's tool of Figures 3 and 4 by further providing pins as taught by Mars so as to facilitate accurate guidance to the dies.

Claims 7, 8, 9 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ribback (3,668,915). The upper portion 2 and lower portion 2 are each provided with cavities for swaging a workpiece. A spring is shown as biasing the upper portion and lower portion away from one another. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ribback (3,668,915). It is known in the tool art to use stainless steel for its durability and its corrosion resistant properties. Such a provision within Ribback's device would have been obvious to the skilled artisan at the time of the invention for the noted motivation.

Claims 7, 8, 9 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Edwards (4,047,420). Edwards shows an upper portion 82 and lower portion 78, the lower portion being biased away from the upper portion by the fluid drive, having cavities for shaping a workpiece therein. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of

performing the intended use, then it meets the claim. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards (4,047,420). Edwards does not disclose the specific throw. Such is considered to be dependent upon the specific intended use of the device. Clearly, the skilled artisan having the benefit of the crimping tool shown by Edwards would have been disposed to adjust the throw to any amount based upon the specific workpiece being crimped, its material characteristics and its size. Therefore, it would have been obvious to the skilled artisan to have modified Edwards' tool by adjusting the throw to suit the particular workpiece being crimped.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feeser (6,517,547) in view of Ribback (3,668,615). Feeser shows a marker band 38 attached to the catheter. It would have been obvious to the skilled artisan at the time of the invention to have modified Feeser's process by pressing the band on the catheter using the joining techniques taught by Ribback so as to securely join the band to the catheter.

#### **INDICATION OF ALLOWABLE SUBJECT MATTER**

Claims 5, 10, 11 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### **PRIOR ART CITED BY EXAMINER**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

#### **RESPONSE BY APPLICANT(S)**

Applicant(s) response to be fully responsive and to provide for a clear record must specifically point out how the language of the claims patentably distinguishes them from the references, both those references applied in the objections and rejections and those references cited in view of the state of the art in accordance with 37 CFR 1.111 (a), (b) and (c).

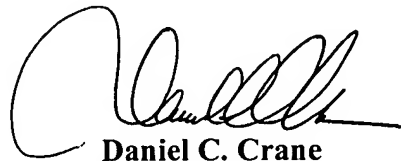
#### **INQUIRIES**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner D. Crane whose telephone number is (571) 272-4516. The examiner's office hours are 6:30AM-5:00PM, Tuesday through Friday. The examiner's supervisor, Mr. Derris Banks, can be reached at (571) 272-4419.

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Documents related to the instant application may be submitted by facsimile transmission at all times to Fax number (703) 872-9306. Applicant(s) is(are) reminded to clearly mark any transmission as "DRAFT" if it is not to be considered as an official response. The Examiner's Fax number is (571) 273-4416.

DCCrane  
March 23, 2005

A handwritten signature in black ink, appearing to read 'DCCrane', with a large, stylized initial 'D'.

**Daniel C. Crane**  
Primary Patent Examiner  
Group Art Unit 3725